

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

OCT -6 2011

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

|                                |   |                            |
|--------------------------------|---|----------------------------|
| ANNA B.,                       | ) | 2 CA-JV 2011-0048          |
|                                | ) | DEPARTMENT A               |
| Appellant,                     | ) |                            |
|                                | ) | <u>MEMORANDUM DECISION</u> |
| v.                             | ) | Not for Publication        |
|                                | ) | Rule 28, Rules of Civil    |
| ARIZONA DEPARTMENT OF ECONOMIC | ) | Appellate Procedure        |
| SECURITY and JOSEPH B.,        | ) |                            |
|                                | ) |                            |
| Appellees.                     | ) |                            |
| _____                          | ) |                            |

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J18974300

Honorable Sarah R. Simmons, Judge

AFFIRMED

Joan Spurney Caplan

Tucson  
Attorney for Appellant

Thomas C. Horne, Arizona Attorney General  
By Claudia Acosta Collings

Tucson  
Attorneys for Appellee Arizona  
Department of Economic Security

HOWARD, Chief Judge.

¶1 Anna B. appeals from the juvenile court's ruling terminating her parental rights to her son, Joseph B., born in May 2002, pursuant to A.R.S. § 8-533(B)(8)(c). She argues the ruling should be reversed because the court failed to make a finding that the

Arizona Department of Economic Security (ADES) had made diligent efforts to provide appropriate reunification services, as required by § 8-533(B)(8), and because ADES failed to carry its burden of proof on this issue.

¶2 A juvenile court may terminate a parent's rights if it finds clear and convincing evidence of one of the statutory grounds for severance and a preponderance of evidence that termination of the parent's rights is in the child's best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). “[W]e view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the [juvenile] court's decision, and we will affirm a termination order that is supported by reasonable evidence.” *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009) (citation omitted). That is, we will not reverse a termination order for insufficient evidence unless, as a matter of law, no reasonable fact-finder could have found the evidence satisfied the applicable burden of proof. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

¶3 Joseph was removed from his parent's care in February 2009 after his fifteen-year-old half-sister BreeAnna reported their father, Joseph Sr., had been sexually abusing her, supplying her with marijuana, and smoking marijuana in Joseph's presence. After a contested dependency proceeding, the juvenile court adjudicated Joseph dependent as to Anna, finding she “[did] not have sufficient insight into or understanding

of the serious situation that existed” in the home and “[did] not have the ability to appreciate [the] risk to Joseph” or to protect him from his father.<sup>1</sup>

¶4 In a lengthy, under-advisement ruling issued after a contested termination hearing, the juvenile court detailed the services ADES had “provided or attempted to provide” to Anna and Joseph Sr., including “supervised visitation, Drug Testing, Child and Family Team Meetings, Psychiatric/Psychological Evaluations, Arizona Family First Referrals, Non-Offending Parent Sex Abuse Treatment, Sex Offender Treatment, MIKID services, . . . Mental Health Agency Services and Parent Aide Services.” The court found that “[a]t some point in the two years” that Joseph had remained in out-of-home care, Anna “had told the [Child Protective Services (CPS)] case worker that [she] did not want to participate in CPS services, except for the visitation[s],” but would participate in services she and Joseph Sr. had arranged privately. The court noted Anna’s testimony that she had “refused to participate in some services even if this would cause her to lose Joseph” and found Anna had “vacillated between being compliant and being partially compliant” with her case plan, but “[e]ven when [she] participated in services, she did not appear to benefit from such services.”

¶5 The juvenile court specifically addressed Anna’s participation in individual and group counseling with Sherri Mikels Romero, as well as Mikels Romero’s request that “[Anna] participate in an assessment of her cognitive abilities to aid in her therapy.”

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<sup>1</sup>Joseph was found dependent as to his father after Joseph Sr. admitted the allegations in an amended dependency petition. Joseph Sr.’s parental rights to Joseph also have been terminated; he is not a party to this appeal.

The court found ADES had referred Anna to a vocational rehabilitation service that provided such evaluations, as well as other services that might have helped her, but that Anna never had participated in the testing. Noting Mikels Romero’s testimony that Anna had been “resistant” to the counseling and had “continued to disbelieve” Joseph Sr. had sexually abused BreeAnna, the court found the therapy had been discontinued “[b]ecause of Ms. Romero’s inability to address the sexual abuse and [Anna’s] failure to obtain an assessment of her cognitive abilities.” The court concluded termination was warranted pursuant to § 8-533(B)(8)(c) because ADES clearly and convincingly had established that Joseph had been in court-ordered, out-of-home care for more than two years; that Anna had failed to remedy the circumstances causing that out-of-home-placement; and that there existed a substantial likelihood that she would not be capable of exercising proper and effective parental control in the near future.

### **Sufficiency of Ruling**

¶6 To prevail on a motion to terminate parental rights based on any time-in-care ground found in § 8-533(B)(8), ADES must establish that it made a diligent effort to provide the family with appropriate reunification services. *See* § 8-533(B)(8). ADES fulfills this duty by providing the parent “with the time and opportunity to participate in programs designed to help her become an effective parent.” *In re Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). But ADES is not required to provide the parent with every conceivable service or to ensure that she participates in every service offered. *Id.*

¶7 Although she did not object below, on appeal Anna relies on Rule 66(F), Ariz. R. P. Juv. Ct.,<sup>2</sup> and maintains the juvenile court erred because its ruling does not include an express finding that ADES had made a diligent effort to provide her with appropriate reunification services. She characterizes this finding as “one of the absolutely necessary elements of proof” required for termination pursuant to § 8-533(B) and argues we should reverse the court’s termination order because of its omission. Specifically, she contends the court “failed to address the issue . . . of [ADES]’s failure to provide the neuro-psychological evaluation” requested by Mikels Romero.

¶8 Ordinarily, we do not consider an issue raised for the first time on appeal, “particularly [when] it relates to the alleged lack of detail in the juvenile court’s findings.” *Christy C. v. Ariz. Dep’t of Econ. Sec.*, 214 Ariz. 445, ¶ 21, 153 P.3d 1074, 1081 (App. 2007). Moreover, “the juvenile court will be deemed to have made every finding necessary to support [its] judgment.” *In re Maricopa Cnty. Juv. Action No. JS-8287*, 171 Ariz. 104, 111, 828 P.2d 1245, 1252 (App. 1991), quoting *In re Pima Cnty. Severance Action No. S-1607*, 147 Ariz. 237, 238, 709 P.2d 871, 872 (1985) (alteration added).

¶9 The juvenile court’s termination order details the services ADES provided or attempted to provide to Anna, as well as her failure either to participate in or benefit from those services. We conclude a finding that ADES had made sufficient reunification

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<sup>2</sup>Rule 66(F)(2)(a), Ariz. R. P. Juv. Ct., provides that, upon finding that “the moving party has met its burden of proof,” the juvenile court “shall . . . [m]ake specific findings of fact in support of the termination of parental rights and grant the motion or petition for termination.”

efforts is inherent in the court's finding that ADES had "proven, by clear and convincing evidence," that termination of Anna's parental rights was warranted "pursuant to § 8-533(B)(8)(c)." We therefore deem the court to have made such a finding, as it had on numerous occasions during the pendency of this proceeding.<sup>3</sup>

### **Diligent Reunification Efforts**

¶10 Anna next argues the evidence was insufficient to support a finding that ADES had made a diligent effort to provide Anna with appropriate reunification services because ADES had failed to provide her with the testing recommended by Mikels Romero. According to Anna, "[a]fter [she] told [her CPS case manager] that she did not go to the vocational rehabilitation center[,] he did not make any other efforts to get her the testing because she told him she [did] not want to participate in services." Without specifically challenging any of the juvenile court's findings of fact, she maintains, "It is entirely possible that the [juvenile] court would have decided against termination had it considered the issue of the neuro-psychological evaluation."

¶11 But the juvenile court did address ADES's effort to refer Anna for testing in response to Mikels Romero's concerns, and the issue of whether this effort was sufficient was fully developed and argued at trial. The court expressly found cognitive testing was not performed because Anna had failed to follow through with the referral, not because ADES had failed to provide for the service. Reasonable evidence supported

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<sup>3</sup>The court expressly found ADES was making reasonable efforts to reunify the family in October and December 2009; in February, May, and September 2010; and in January 2011. On this record, no evidence exists that Anna ever had objected to those findings.

that finding, and we do not reweigh the evidence on appeal. *See Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶¶ 4, 14, 100 P.3d 943, 945, 947 (App. 2004) (juvenile court “in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts”).

### Disposition

¶12 We find no error in the juvenile court’s termination of Anna’s parental rights to Joseph. Accordingly, we affirm the court’s termination order.

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom  
PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.  
J. WILLIAM BRAMMER, JR., Judge